

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-65

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH CANYONS SCHOOL DISTRICT FOR THE BUTLER MIDDLE SCHOOL AUDITORIUM

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the “*Interlocal Cooperation Act*”), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the Board of Education of the Canyons School District (“*District*”) and the city of Cottonwood Heights (“*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, a new building to house District’s Butler Middle School (the “*New Building*”) currently is under construction; and

WHEREAS, District’s original plans for the New Building included an auditorium (the “*Auditorium*”) with approximately 650 fixed seats. To provide a venue of increased size for City-sponsored events such as plays, performances, meetings, debates and the like, City has requested District to increase the capacity of the Auditorium to 1,000 fixed seats, conditioned on City’s agreement to pay the increased costs attributable to such enhancement; and

WHEREAS, consequently, City has prepared and submitted for District’s review an “Interlocal Cooperative Agreement (New Butler Middle School)” containing the terms and conditions for increasing the capacity of the Auditorium at City’s cost (the “*Agreement*”); and

WHEREAS, City’s municipal council (the “*Council*”) met in regular session on 4 December 2012 to consider, among other things, approving City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with District be, and hereby is, approved, and that City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of City following such amendments and modifications to the Agreement as City’s mayor, in consultation with City’s manager and attorney, may deem necessary or advisable.

This Resolution, assigned no. 2012-65, shall take effect immediately upon passage.

PASSED AND APPROVED this 4th day of December 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By *Kelvin H. Cullimore, Jr.*
Kelvin H. Cullimore, Jr., Mayor

VOTING:

| | | |
|--------------------------|---|------------------------------|
| Kelvyn H. Cullimore, Jr. | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael L. Shelton | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| J. Scott Bracken | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael J. Peterson | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Tee W. Tyler | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |

DEPOSITED in the office of the City Recorder this 4th day of December 2012.

RECORDED this 5th day of December 2012.

Interlocal Cooperative Agreement

(New Butler Middle School)

THIS INTERLOCAL COOPERATIVE AGREEMENT (this "*Agreement*") is made effective 4 December 2012 by the city of **COTTONWOOD HEIGHTS**, a municipal corporation of the state of Utah ("*City*"), and **THE BOARD OF EDUCATION OF THE CANYONS SCHOOL DISTRICT**, a school district of the state of Utah ("*District*"). City and District are each referred to herein as a "*Party*" and are collectively referred to herein as the "*Parties*."

RECITALS:

A. District owns certain improved real property (the "*District Property*") that heretofore has been used as the Butler Middle School and the Cottonwood Height Elementary School ("*CH Elementary*").

B. A new building to house Butler Middle School (the "*New Building*") currently is under construction on a portion of the District Property that is located between the site of the current building housing Butler Middle School (the "*Old Building*") and CH Elementary. In connection with completion of the New Building, the Old Building and CH Elementary will be razed and the playing fields, parking areas and associated improvements will be reconfigured.

C. District's original plans for the New Building included an auditorium (the "*Auditorium*") with approximately 650 seats. To provide a venue of increased size for City-sponsored events such as plays, performances, meetings, debates and the like, City has requested District to increase the capacity of the Auditorium to 1,000 fixed seats, conditioned on City's agreement to pay the increased costs attributable to such enhancement.

D. The Interlocal Cooperation Act (UTAH CODE ANN. § 11-13-101, *et seq.*) (the "*Interlocal Cooperation Act*") provides, among other things, that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions to do what each agency is authorized by law to perform.

E. The Parties desire to enter into an "interlocal cooperative agreement" whereunder they would cooperate with one another concerning the matters specified in this Agreement.

F. The Parties are "public agencies" for purposes of the Interlocal Cooperation Act, are empowered to enter into this Agreement, and have determined that it is mutually advantageous to enter into this Agreement.

G. This Agreement shall entirely supersede any and all prior negotiations and agreements, oral and/or written, between the Parties regarding the matters addressed by this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

Section 1. **Auditorium.** City shall reimburse District for the additional cost of increasing the capacity of the Auditorium to 1,000 fixed seats, on the following terms and conditions:

(a) **Modifications to Auditorium, Etc.** By 31 December 2013, District shall cause the Auditorium to be constructed in a manner that includes (i) at least 1,000 fixed seats, and (ii) dedicated, secure space in the stage area of the Auditorium for permanent storage of City's props, costumes and related goods and equipment. District is not responsible for any damages or theft of City's property stored on the premises. The plans and specifications for the Auditorium shall be mutually agreeable to both Parties, who shall cooperatively work together to prepare and approve such plans in a reasonably timely fashion.

(b) **City's Contribution.** City shall pay to District the actual cost (the "Contribution") of the modifications to the Auditorium specified in section 1(a), above (the "Modifications"), up to a cumulative maximum of \$1,000,000.00, as follows:

(i) **Substantiation.** City's obligation to pay the Contribution to District shall be conditioned on District first providing to City such evidence as City reasonably may require to substantiate the actual cost of the Modifications incurred by District.

(ii) **Payment Schedule.** Conditioned on prior completion of construction and issuance of a certificate of occupancy (collectively, "Completion") for the New Building (which currently is anticipated to occur by 31 December 2013), City shall pay or cause to be paid the Contribution to District as follows: (A) at least 50% of the Contribution shall be paid by 30 June 2013, with \$361,500 of such amount payable through City's conveyance to District of approximately .85 acres of realty contiguous to the Southwest corner of the District Property pursuant to a separate interlocal agreement between the parties of essentially even date with this Agreement; however, the \$361,500 is conditioned upon the successful completion of the conveyance; and (B) the balance of the Contribution shall be paid by 30 June 2014, in cash from City or from one or more grants obtained by City.

(c) **Use of Auditorium.** In return for payment of the Contribution, City shall be entitled to use of the Auditorium as follows:

(i) **Relative Priorities of Use.** From seven (7) calendar days after District's academic year ends for summer recess in June until seven (7) calendar days before District's school year begins in August, City shall have first priority for use of the Auditorium, and District shall have second priority for its use. During the balance of the year, such priorities shall be reversed; provided, however, that City also shall have first priority use of the Auditorium one day each month during District's academic year if such City usage will occur on a Saturday or after 6:00 p.m. City shall provide to Butler Middle School's principal City's requested dates and times for the upcoming fiscal year no later July 1st of each year, and City and Butler Middle School's principal will cooperate to finalize those dates no later than August 31st of that year; provided, however, that District shall reasonably cooperate with any reasonable request subsequently made by City to amend such schedule. Each Party shall cooperate with the other regarding scheduling of events in the Auditorium to the greatest extent reasonably possible to enable both Parties to use the Auditorium for their purposes. A requesting Party has the right to use the Auditorium whenever it is not being used by the other Party.

(ii) Janitorial Fees, Etc. In connection with its actual use of the Auditorium, City promptly shall reimburse District for the actual cost incurred by District for any increased janitorial, electrical, IT, security, etc. services arising from City's use of the Auditorium. Such rates shall be discussed and agreed upon by the Parties in advance, at least annually. City may, however, utilize its own personnel to perform any duties related to a City-scheduled performance, including, but not limited to, janitorial services, ticket-taking, IT services, and security services. If City determines to use its own personnel, it will provide District with such notice at least one week before the scheduled performance. City may also determine to provide such notice on an annual basis to District. In addition, any City personnel who will be involved in operating any of the Auditorium's lighting or sound equipment must receive annual training, which shall be conducted by designated District personnel at a mutually convenient time.

(iii) Advertising/Publicity. City shall have the right to reasonable co-use of any on-site marquee or electronic signage to publicize any upcoming City event in the Auditorium.

(iv) Parking. Attendees of City events in the Auditorium shall be entitled to use parking areas located on the District Property, free of charge. City and its invitees, and District and its invitees, shall be beneficiaries of any cross-parking rights with adjacent properties owned by other governmental entities.

(v) Event Flags. City may, at its cost and liability, display flags and banners on the outside of the Auditorium in connection with City's Butlerville Days community event on or about July 24th of each year; provided, however, that no damage to the New Building shall result from such display.

(vi) Damages. City shall pay for any damages beyond normal wear and tear that occur as a result of City's use of the Auditorium.

(d) Insurance.

(i) Liability Insurance. Throughout the term of this Agreement, each Party shall, at its cost, maintain in full force and effect a comprehensive commercial general liability insurance policy or policies (herein collectively referred to as a "*Liability Policy*") against premises liability or other claims for damage or injury to persons or property arising from such party's use or occupancy of the Auditorium and related parking lots and improvements associated with the New Building. Each Liability Policy shall provide coverage up to the Governmental Immunity Act limits. The insurance coverage to be afforded by a Liability Policy may, at the providing Party's option, be provided under a "blanket" liability policy covering such Party or more of such Party's other locations.

(ii) Form of Liability Policy. Each Liability Policy shall be with the Utah Local Governments Trust, Division of Risk Management or other companies reasonably selected by the providing Party, and on forms and with loss payable clauses reasonably satisfactory to the other Party (the "*Other Party*"), naming the Other Party and any others reasonably designated by the Other Party as additional insureds. Such policy shall be written as a primary policy, not contributing with and not in excess of coverage which the Other Party may

carry. No such policy shall be cancelable (or coverage reduced) except after twenty (20) days written notice to the Other Party. A copy of a Liability Policy or a certificate evidencing the existence and amounts of such insurance shall be delivered to the Other Party within fifteen (15) days after the Other Party's request.

(iii) Casualty Insurance. Throughout the Lease Term, District shall maintain in effect a policy or policies (hereinafter collectively referred to as the "*Casualty Policy*") of fire and extended coverage casualty insurance on the New Building and its associated improvements in the amount of their full replacement cost. The Casualty Policy shall be with such licensed insurer as District reasonably may select. District shall pay all costs associated with the Casualty Policy. The proceeds of the Casualty Policy shall be used by District to promptly rebuild the Auditorium to its prior condition in the event of a loss covered by the Casualty Policy. If District determines for whatever reason not to rebuild the Auditorium, then District promptly shall refund to City the Contribution amount under section 1(b), above, less depreciation based on straight-line depreciation over a 40-year life.

Section 3. Standards. Each Party shall assure that it performs its obligations hereunder in full compliance with all applicable laws and standards of performance. Should City propose a use of the Auditorium that does not meet District's standard of performance, then that particular use will not be allowed in the Auditorium and City shall find an alternative venue.

Section 4. Costs. Except as otherwise specified herein, each Party shall pay its own costs incurred to perform its obligations hereunder, including, without limitation, salaries and benefits to its personnel and all costs of equipment for such personnel.

Section 5. Conflict Resolution. In the event of a dispute between the Parties concerning this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of City will meet as soon as practical with a representative of District to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved pursuant to section 12 below.

Section 6. Employment Status.

(a) Official Status. Each Party shall have complete control and discretion over its personnel performing such Party's obligations under this Agreement, and the same shall at all times be and remain employees of such Party.

(b) Salary, Wages and Benefits. A Party shall not have any obligation or liability for the payment of any salaries, wages, pension, civil service, retirement or other benefits or compensation to the other Party's personnel performing such other Party's obligations under this Agreement.

Section 7. Hold Harmless; Indemnity. The Party that uses the Auditorium shall hold harmless, indemnify and defend the Other Party from all claims, actions, or damages arising out of the Party's use of the Auditorium, including claims that arise from use of parking areas and access to and egress from the Auditorium for an event. The Parties are governmental entities under the Governmental Immunity Act of Utah (UTAH CODE ANN. § 63G-7-101 *et seq.*) (the "*Immunity Act*"). This Agreement shall not be construed with respect to third parties as a waiver of any governmental immunity to which either of the Parties is entitled under the Immunity Act

or otherwise. The indemnity obligations imposed by this Agreement are limited to the Immunity Act's limits, currently \$648,700 per occurrence and \$2,221,700 aggregate.

Section 8. **Term.** This Agreement shall be effective as of the date specified above, and, unless renewed or sooner terminated as provided for herein, shall terminate at midnight on 1 July 2052. Thereafter, this Agreement shall be deemed automatically renewed for successive 10-year terms until such time as the Parties either mutually agree in writing to a longer term or this Agreement is terminated as provided in section 10 below. However, after 2052, ownership of the Auditorium reverts completely to District with no further financial reimbursement obligations to City. After that time, City may continue to use the Auditorium as described above at no cost to City other than costs outlined in this Agreement.

Section 9. **Termination.** In the event of a Party's material default hereunder that results in litigation under section 12 below, the non-defaulting party may, *inter alia*, seek a court order terminating this Agreement.

Section 10. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by UTAH CODE ANN. §11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of City's manager or designee and District's business administrator or designee. Any real or personal property used in the Parties' cooperative undertaking herein shall be acquired, held, and disposed of as determined by such joint board.

(c) **Financing Joint Cooperative Undertaking and Establishing Budget.** There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

Section 11. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below.

City: COTTONWOOD HEIGHTS
Attn. Liane Stillman, City Manager
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

With a copy to: Wm. Shane Topham
CALLISTER NEBEKER & MCCULLOUGH
10 East South Temple, 9th Floor
Salt Lake City, UT 84133

District: CANYONS SCHOOL DISTRICT
Attn. Keith Bradford, Business Administrator
9150 South 500 West
Sandy, UT 84070

With a copy to: Daniel R. Harper
BURBIDGE & WHITE
15 West South Temple, #950
Salt Lake City, UT 84101

Section 12. **Claims and Disputes.** Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, each of the Parties shall continue to perform its obligations hereunder during the pendency of such dispute.

Section 13. **Non-Funding.** Funds are not presently available for either Party's performance of this Agreement beyond the end of the Parties' current fiscal years, which is 31 December 2012 for District, and 30 June 2013 for City. Each Party's obligation for performance of this Agreement beyond the end of its current fiscal year is contingent upon funds being appropriated for any payments due under this Agreement. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for any payments due or about to become due under this Agreement, then this Agreement shall create no obligation on such Party as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated or in the event of reduction in appropriation, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Each Party shall endeavor to notify the other Party as soon as possible when and if such financial circumstances may exist. Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other charges of any kind whatsoever to the parties and no right or action or damages or other relief shall accrue to the benefit of a Party against the other Party as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Section 14. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 15. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 16. **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 17. **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

Section 18. **Time.** Time is the essence of this Agreement.

Section 19. **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and any closings contemplated by this Agreement, and shall continue in full force and effect throughout the term of this Agreement.

Section 20. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 21. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof.

Section 22. **Severability.** In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 23. **Litigation Expenses.** If any action, suit or proceeding is brought by a party concerning this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

Section 24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 25. **Approval by Attorneys.** This Agreement shall be submitted to the authorized attorneys for each of the Parties for approval in accordance with UTAH CODE ANN. §11-13-202.5.

Section 26. **Possible Future Amendment and Restatement.** The parties shall negotiate in good faith to amend and restate this Agreement should either party approach the other with suggested changes. All amendment to this agreement shall be in writing.

[Signature page follows.]

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

Linda W. Dunlavy, City Recorder

Date signed: _____

By: _____

Kelvyn H. Cullimore, Jr., Mayor

Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____

Wm. Shane Topham, City Attorney

Date Signed: _____

DISTRICT:

ATTEST:

**BOARD OF EDUCATION OF THE
CANYONS SCHOOL DISTRICT**

Keith Bradford, Business Administrator

Date signed: _____

By: _____

Tracy S. Cowdell, President

Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____

Daniel R. Harper, Attorney for CSD

Date Signed: _____